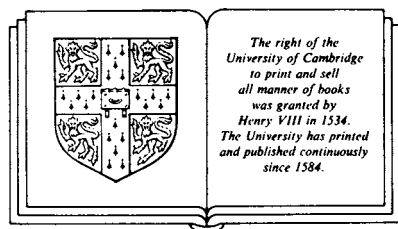


# LAW AND GOVERNMENT UNDER THE TUDORS

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ESSAYS PRESENTED TO SIR GEOFFREY ELTON  
REGIUS PROFESSOR OF MODERN HISTORY IN  
THE UNIVERSITY OF CAMBRIDGE  
ON THE OCCASION OF HIS RETIREMENT

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# Wolsey and the Parliament of 1523

JOHN GUY

**N**EWES', wrote Thomas Cromwell to John Creke on 17 August 1523, 'refresshith the spy[rit] of lyffe'. His letter followed hard upon the dissolution four days earlier of the only parliament summoned during Wolsey's chancellorship.

Wherfor ye shall vnderstonde that by long tyme I amongist other haue Indured a parlyament which contenwid by the space of xvij hole wekes wher we comunyde of warre, pease, Stryffe, contencyon, debatte, murmure, grudge, Riches, pouerte, penurye, throwth, falshode, Justyce, equitye, discaite, opprescyon, Magnanymyte, actyuyte, force, attempraunce, Treason, murder, Felonye, consyli[ation], and also how a commune welth myght be ediffyed and a[ls]o contenwid within our Realme. Howbeyt in conclusyon we haue d[one] as our predecessors haue been wont to doo that ys to say, as well as we myght and lefte wher we begann.<sup>1</sup>

That this parliament was acrimonious thanks to Wolsey's heavy-handedness is uncontroversial.<sup>2</sup> The cardinal soured the atmosphere from the start by demanding supply of £800,000 on top of the £204,424 he collected from the laity by means of 'loans' in 1522-3.<sup>3</sup> When the commons mustered, Wolsey

<sup>1</sup> SP 1/28, fo. 153 (LP iii (2) 3249); printed by R. B. Merriman, *Life and Letters of Thomas Cromwell* (2 vols., Oxford, 1902), I, pp. 313-14.

<sup>2</sup> Previous studies are by J. S. Roskell, *The Commons and their Speakers in English Parliaments, 1376-1523* (Manchester, 1965), pp. 324-32; R. Pauli, 'Kardinal Wolsey und das Parlament vom Jahre 1523', *Historische Zeitschrift*, 21 (1869), 28-64; G. R. Elton, *Reform and Reformation: England 1509-1558* (London, 1977), pp. 88-91; A. F. Pollard, *Wolsey* (London, 1929), pp. 132-4. The significance of Thomas More's request for freedom of speech for the commons has been treated by J. E. Neale, 'The commons' privilege of free speech in parliament', repr. by E. B. Fryde and E. Miller, eds., *Historical Studies of the English Parliament* (2 vols., Cambridge, 1970), II, pp. 147-76. An account of this is not repeated here; see also Roskell, p. 42. The argument of R. L. Woods that Wolsey cemented his power and opened the door to commonwealth politics in 1523 is unconvincing: 'Politics and precedent: Wolsey's parliament of 1523', *Huntington Library Quarterly*, 40 (1977), 297-312; see also his 'The amicable grant: some aspects of Thomas Wolsey's rule in England, 1522-1526', unpublished U.C.L.A. Ph.D. dissertation (1974), pp. 20-62.

<sup>3</sup> LP iii (2) 2483(3), p. 1050; J. J. Goring, 'The general proscription of 1522', *English Historical Review*, 86 (1971), 685-705; G. W. Bernard, *War, Taxation, and Rebellion in early Tudor England: Henry VIII, Wolsey, and the Amicable Grant of 1525* (Brighton, 1986), pp. 110-30. Clerical taxation and the convocations of Canterbury and York are outside the scope of this contribution.

blustered. He retorted 'that he would rather have his tongue, plucked out of his hedde with a paire of pinsons, then to move the kyng, to take any lesse some'; he tried to overawe M.P.s but met 'a marvellous obstinate silence'; he lied that the lords had offered the requisite taxation; he reneged on his promise of 1522 that the 'loans' would be repaid out of the proceeds of the next parliamentary subsidy.<sup>4</sup> Yet what proportion of the parliament was taken up by the subsidy negotiations? Did Wolsey have intentions besides taxation in 1523 that, in the event, he was unable to pursue? Although it cannot be proved beyond any shadow of doubt, documentary evidence exists to suggest that he launched policies on enclosures and collusive recoveries in parliament. These came to nothing; the subsidy bill was not ready even by mid-July. And the legislation that did emerge in 1523 deserves scrutiny. Of course, there is no question that reform by statute was ever part of Wolsey's scheme – that idea is too much for anyone to swallow. Wolsey was linked to proposals on enclosures and recoveries, but his failure to make progress with either confirms the incompetence with which he managed this parliament.

When parliament assembled on 15 April, the bishop of London, Cuthbert Tunstall, master of the rolls, delivered the speech from the throne.<sup>5</sup> Extant in a fully written out version, his address was a sermon on the text 'Justitia et judicium preparatio sedis tue' (Ps. 89:14). It was a rambling and inchoate performance but it established 'justice' and 'commonwealth' as the slogans of 1523. The requirements of good law were that it should be 'honeste, juste, resonable, necessary, manifeste, and proffitable for the comon weale'. If the present parliament 'doo wele and substancially order the lawes and statutes it ys not to be doubtede but al this roialme schalbe put yn gode order and this gode order wolde be soon hade yf that men whiche now be assembled entendyd no thynge but the comon weale'. But regal justice 'standyth yn juste exercise of batelles and warres ayenste al those that doythe invade or entendyth to destroye hys persone, hys roialme or hys subjectes'. This remark paved the way for Tunstall's advocacy of the king's necessity. When adversaries were not subject to his laws the king had no redress, for he lacked superiors to whom he might complain. No option thus existed but 'to expunge

For these and Wolsey's attempt to convoke a legatine synod, see M. Kelly, 'Canterbury jurisdiction and influence during the episcopate of William Warham, 1503–1532', unpublished Cambridge Ph.D. dissertation (1963), pp. 174–6, 306–10, 316–17.

<sup>4</sup> Edward Hall, *Henry VIII*, ed. C. Whibley (2 vols., London, 1904 [1550 edn.]), I, pp. 286–7; D. Hay, ed., *The Anglica Historia of Polydore Vergil* (Camden Society, 3rd series, 74, 1950), p. 306; R. S. Sylvester and D. P. Harding, eds., *Two Early Tudor Lives* (New Haven, 1962), p. 206; H. Ellis, ed., *Original Letters Illustrative of English History*, 1st series (3 vols., 2nd edn., London, 1825), I, p. 221 (hereafter cited as Ellis); *LP* iii(2) 2484; BL, Cotton MS Cleopatra F. 6, fos. 316–20; Goring, 'The general proscription of 1522', p. 700.

<sup>5</sup> SP 6/13, fos. 3–19 (*LP Add.* 378). Other versions of the speech are Hall, I, pp. 278–9; Supplement to the *Rolls of Parliament*, printed as an appendix to *Journals of the House of Lords*, I, p. lxxv (hereafter cited as *Rot. Parl. suppl.*); R. Brown, ed., *Calendar of State Papers . . . Venice*, III (London, 1869), p. 313.

and convince them by batele and stronge hande, and the hole roialme ys bownde to ayde and assiste ther kynge yn this cause'.<sup>6</sup> Wolsey reinforced these remarks in his main policy statement to the commons on 29 April. He declared 'how the Frenche kyng Fraunces the first . . . had so often tymes broken promise with the kyng of England, and his welbeloved nephew Charles the Emperor, that the kyng of his honor, could no longer suffre'. Henry VIII 'of necessitie was driven to warre and defence, whiche in no wise could be maintained, without great somes of money'. Wolsey demanded taxation at the rate of 4s. in the £ on goods and land, which he claimed would raise £800,000; 'for he saied that the yere folowing, the kyng and the Emperour should make suche warre in Fraunce, as hath not bene sene'.<sup>7</sup>

The 1523 parliament had three sessions, the first two at Blackfriars from 15 April to 21 May and from 10 June to 29 July, and the third at Westminster from 31 July to 13 August. The dates of the first two sessions followed those of Easter (5 April) and Whitsuntide (24 May); the third was really an adjournment to Westminster of the second on account of plague in London.<sup>8</sup> But the third session encroached further into the summer than any other meeting of parliament between 1433 and the Long Parliament: the nearest equivalent was the summer session of Charles I's first parliament, held at Oxford from 1st to 12th August 1625. And there were contemporary comments. Richard Lyster, Henry VIII's solicitor-general, informed Lord Darcy on 28 April that no bills had yet passed the lords or the commons, but a subsidy was demanded for the war with France.<sup>9</sup> The earl of Surrey's correspondent wrote on 14 May:

sithens the begynnnyng of the Parliamente there hathe bene the grettiste and soreste hold in the lower Hous for payement of l<sup>j</sup><sup>s</sup>. of the li. that ever was sene I thinke in any parliamente. This matier hathe bene debated and beatten xv. or xvj dayes to giddir: the hieste necessitie alleged on the Kings behalf to us that ever was herd of: and of the contrarie, the hieste povertie confessed, as well by knights, squiers, and gentilmen of every quarter, as by the commoners, citezeins, and burgessis. There hathe bene suche hold that the Hous was like to have bene dissevered; that is to sey the Knights being of the Kings Counsaill, the Kings servaunts, and gentilmen, of the oon partie, whiche in soo long tyme were spoken with and made to sey ye; it may fortune, contrarie to their hert, will, and conscience.<sup>10</sup>

So Wolsey's initial demand of taxation at the rate of 4s. in the £ was a bargaining ploy; real negotiations centred on the prospect of half that amount – that is, the basic rate used for the 'loans' of 1522–3. Indeed, this was unremarkable. In 1512 Archbishop Warham had asked parliament for £600,000 'to meyntheyne the warys one yere' before settling for £126,745.<sup>11</sup>

<sup>6</sup> SP 6/13, fos. 14, 17–18.

<sup>7</sup> Hall, I, pp. 284–5. Wolsey's claim was extravagant; a tax of 4s. in the £ would have produced nearer £400,000. Cf. Bernard, *War, Taxation, and Rebellion*, p. 117.

<sup>8</sup> *Rot. Parl. suppl.*, p. cxlviii.

<sup>9</sup> LP iii (2) 2982.

<sup>10</sup> Ellis, 1st series, I, pp. 220–1.

<sup>11</sup> Bernard, *War, Taxation, and Rebellion*, p. 121.

Next, Wolsey had expressly promised when instructing his collectors for the first 'loan' that the money was refundable from the proceeds of the next parliamentary grant, hence there was logic from the government's viewpoint in applying the rate of tax most likely to achieve this purpose.<sup>12</sup> But Surrey's correspondent continued: 'My lorde Cardinall hath promysed on his feithe that the ij<sup>s</sup>. of the li. of lone money shalbe payed with a good will and with thanke. But no daye is appoyntid thereof'.<sup>13</sup> And here is the nub. The 'loans' were not to be repaid promptly; the Crown's debt was eventually cancelled by an act of 1529 on the grounds that the 'loans' were used for the defence of the realm and might thus be deemed taxation. Also a cumulative burden of taxation had arisen by 1523. It is hardly surprising that the commons pleaded poverty when £288,814 had been levied in lay taxation between 1512 and 1517 and the 'loans' raised £204,424 from the laity.<sup>14</sup> In fact, those M.P.s who complained that the realm lacked adequate liquidity for taxation on this scale had some right on their side.<sup>15</sup>

Surrey's correspondent reported an offer of supply on 13 May at the basic rate of 2s. in the £ on goods and lands, adding 'this matier is soo ferre passid that the parliament woll sone bee endid'. But his conjecture was wrong, for according to the chronicler Edward Hall, Wolsey continued the haggling. Hall's vivid account lacks detailed corroboration, but it satisfactorily explains the long delay in drafting the subsidy bill. He wrote: 'This graunt was reported to the Cardinall, which therwith was sore discontent, and saied, that the lordes had graunted iii<sup>s</sup>. of the pound, whiche was proved untrue'.<sup>16</sup> And a revised offer on 21 May did not conclude the matter, since either Wolsey declined it, or M.P.s themselves had second thoughts over the Whitsun recess. In a period when counted votes were extremely rare in the house of commons, M.P.s divided on a third proposal on 27 June, when the motion was defeated: 'the question was asked . . . then was the house divided, and all the commons severed theimselfes, from the knightes of the sheres, so that one yea part remained onely the knightes of the shire, and the commons stifly affirmed that the mocioners of this demaunde, were enemies to the realme'.<sup>17</sup> Hall said that the speaker, Sir Thomas More, was obliged to recall M.P.s: 'and after long perswadyng, and privie laboring of frendes' the rates of the subsidy were finalised.<sup>18</sup> This may have been about 6 July, since Sir John Hussey, one of the king's councillors most active in the commons, told Darcy that day: 'We be yet so busied with common causes in the Parliament, that there is no leisure to

<sup>12</sup> *LP* iii (2) 2484; BL, Cotton MS Cleopatra F 6, fos. 316–20; Goring, 'The general proscription of 1522', p. 700; R. S. Schofield, 'Parliamentary lay taxation 1485–1547', unpublished Cambridge Ph.D. dissertation (1963), pp. 36, 329–30.

<sup>13</sup> Ellis, 1st series, I, p. 221.

<sup>14</sup> *LP* iii (2) 2483(3), p. 1050; Schofield, 'Parliamentary lay taxation', pp. 198–212, table 40 (facing p. 416); Bernard, *War, Taxation, and Rebellion*, pp. 119–20.

<sup>15</sup> Hall, I, pp. 285–6; Bernard, *War, Taxation, and Rebellion*, pp. 115–17.

<sup>16</sup> Ellis, 1st series, I, p. 221; Hall, I, p. 287.

<sup>17</sup> Hall, I, pp. 287–8.

<sup>18</sup> Hall, I, p. 288.

solicit our own particular matters . . . The Parliament goeth forth, and sums of money are granted.<sup>19</sup>

Yet the decision upon the subsidy's rates did not conclude the business. The requisite legislation had to be drafted and enacted, a task still not completed by the middle of July. For Wolsey wrote to Henry VIII:

Over this, Sir, though it was thought by the Speker and [ . . . ] Common House, that their boke for the graunte now to be passed, shuld [have been] perfited and brought unto me as yesterday, yet neverthelas the same ca[nnot come] til tomorowe, at the hithermost. And for asmoche as after the [ . . . ] in to the Upper House, it wol require a good tracte [of time to] oversee and groundly digest the same to your most profite . . . it may th[erefore please] Your Grace to geve commaundement for ordering of your provisions [ . . . ] the certein tyme of your commyng to Bridewel, til suche seacon as [ . . . ] exhibicion of the said boke, and otherwise advertised [ . . . ] tyme when the same, and al other affaires of your Parliament, shal of likelihode be in good redynes; so that sone after the commyng of Your Highnes, every thing may take ende and be perfited accordingly.<sup>20</sup>

The letter established that, drafting delays apart, the subsidy bill required 'a good tracte' even after its introduction in the lords, but Wolsey expected the dissolution of parliament when this and 'other affaires' were completed.

Although Wolsey's letter is undated, it must have been written before the decision to prorogue parliament to Westminster, since the king would lodge at Bridewell only to dissolve a parliament held at Blackfriars, and Henry, in the event, did not stay at Bridewell but at Richmond.<sup>21</sup> Since, however, Wolsey began his letter by reporting receipt of a despatch from Richard Sampson sent from Valladolid on 3 July, he could not have addressed Henry VIII much before 14th, since the likely journey time between Valladolid and London was eleven days.<sup>22</sup> Yet the subsidy bill was still not ready for the lords then.

The subsidy negotiations therefore ruled this parliament until late July. Even after the rates of tax were agreed, extra time was needed to perfect the arrangements for collecting the subsidy. For Wolsey meant to improve the methods of assessing and collecting taxation begun with the subsidies of 1513–15 and the 'loans' of 1522–3. Innovations in 1523 were to transfer assessments of the peerage from the usual commissioners to the supervision of Wolsey and other senior officials; to define the law of distress in default of payment of taxes so as to allow defaulters only eight days' grace before their goods were sold; and to exonerate collectors at the exchequer from sums they were unable to collect, or levy by distress, if the defaulters had died or fled.<sup>23</sup>

<sup>19</sup> *LP* iii (2) 3164.

<sup>20</sup> *St. Pap.*, I, pp. 116–17. The document was damaged during the Cottonian Library fire.

<sup>21</sup> PRO, OBS 1419 (Henry VIII's itinerary).

<sup>22</sup> *LP* iii (2) 3150. The journey could take longer; *LP* iii (2) 3247, 3281 (letter sent 17 Aug. received on 30th).

<sup>23</sup> *Rot. Parl. suppl.*, pp. lxxvi–xc; R. S. Schofield, 'Parliamentary lay taxation', pp. 213–14. See also *LP* iv (1) 1117; (2) 2972.



Stricter assessment of the peerage is enough to explain Wolsey's reference to 'a good tracte' but any major dispute cost time. The question is whether Wolsey fell over his own feet. What happened to his plans for 'justice' and 'commonwealth'? Did such plans exist?

The first sign that they did is given by the Welsh chronicler, Elis Gruffudd, who began to write in 1530.<sup>24</sup> Since his remarks have never been printed, lengthy quotation is justified.

At this time the common people of the realm were greatly angered especially by the cattle and sheep which caused much damage within the realm, so much so, that a number of preachers showed plainly from the pulpit the way sheep in many places within the realm grazed so low that they grazed towns and parishes and swallowed an innumerable number of men. Against this and to put an end to this destruction the king, on the cardinal's advice, called a parliament . . . In this parliament certain knights of the realm were created lords such as Sir William Sandes, Sir Maurice Berkeley, Sir Nicholas Vaux and others. And in this parliament a great furore was made over the damage which the sheep were then causing within the realm. The cardinal firmly and forcefully promised that no man in England should maintain or graze sheep on lowland to destroy ploughing and harrowing, and that no one from then on should enclose the land which was usually common land of that region's tenants . . . The wealthy farmers, having heard the way the burgesses in the lower house held out strongly against them concerning what is related before, made great labour to win the cardinal's favour who indeed allowed the matter to respite by demanding a tax for the king to augment his coffers and to replenish the money he spent in the triumph and to maintain him against the French, since negotiations between him and others involved were likely to be cut short.<sup>25</sup>

That Arthur Plantagenet, illegitimate son of Edward IV, was ennobled Viscount Lisle, and that Sandes, Berkeley and Vaux were created barons within a fortnight of the opening of parliament, is confirmed by the *Chronicle of Calais*.<sup>26</sup> And there is little doubt that the furore reported by Gruffudd took place, because the general pardon that accompanied the subsidy in 1523 included a section on enclosures. The act pardoned illegal enclosures, destruction of houses, or conversion of land from tillage to pasture done before 8 August 1523, provided the enclosures were down, buildings restored, and lands returned to tillage by 13 October 1524. Those in breach of the enclosure statutes would otherwise have to appear in chancery to explain why they did not comply, when they would be required to obey whatever order the court should make. Existing enclosure fines and proceedings were respited until 1524, but they were to be revived then if the enclosures were not

<sup>24</sup> T. Jones, 'A Welsh chronicler in Tudor England', *Welsh History Review*, 1 (1960), 1-17.

<sup>25</sup> National Library of Wales, MS 3054D, fos. 448<sup>v</sup>-9. I am grateful to Mr Glyn Parry of the Department of Manuscripts and Records for transcribing and translating this passage from the Welsh original, and to Dr G. W. Bernard for drawing Gruffudd's chronicle to my attention. See also HMC, *Report on Manuscripts in the Welsh Language*, 1 (London, 1898), pp. 214-21.

<sup>26</sup> J. G. Nichols, ed., *The Chronicle of Calais* (Camden Society, O.S., 35, 1846), pp. 32-3.

down, houses rebuilt, etc., or if satisfactory explanations had not been given in chancery according to the timetable laid down in the act of pardon.<sup>27</sup>

In fact, Gruffudd's account and the act of pardon harmonise if we assume that Wolsey bargained away his position on enclosures during the subsidy negotiations. According to Gruffudd, however, Wolsey had promised to extend the attack on enclosures to protect the rights of tenants in common lands. The chronicler did not say that Wolsey introduced a new bill for enclosures, and no evidence exists that he did, but it is probable that the matter was indeed raised in the terms reported by Gruffudd and that Wolsey was rebuffed in parliament. Acts of 1489 and 1514-15 had forbidden new enclosures and ordered demolished buildings to be reconstructed and land returned to tillage.<sup>28</sup> But customary tenants had no redress against landlords who enclosed commons, because it was not illegal to hedge or ditch lands not previously under the plough, and the statutes of appropment regulating intakes from wastes and commons (1235, 1285) covered only freeholders.<sup>29</sup> Customary tenants in these cases had to resort to chancery and the conciliar courts – this Wolsey knew from his experience as presiding judge there.<sup>30</sup> Did he mean to offer statutory protection against arbitrary intakes by landlords? There is no definitive answer but Gruffudd's report is entirely credible.

Yet far from extending Wolsey's campaign, even his current policy on enclosures was stymied by the act of pardon. For he had decreed in chancery on 12 July 1518 that enclosures made since 1485 be pulled down within forty days and the lands restored to tillage. Those not complying faced a fine of £100 unless they proved in chancery that their enclosures were 'more beneficial for the commonwealth of this realm than the pulling down thereof'.<sup>31</sup> Yet the pardon of 1523 enabled defendants to escape until October 1524! It was not until the amnesty expired that convictions could be obtained. And in 1525-6 many new prosecutions were brought. But they resulted mainly from Wolsey's enclosure inquiry of 1517-18 – the one that preceded his decree.<sup>32</sup> So these cases lay dormant for over a year under the act of pardon and Wolsey had lost more than he gained if he was serious about enclosures. All he achieved in 1523 was an amnesty for the enclosing landlords.

Another report of commonwealth initiative comes from Edward Hall. He thought parliament was summoned 'both for the remedy of mischiefs whiche

<sup>27</sup> *Rot. Parl. suppl.*, pp. xc-xciv (14 & 15 Henry VIII, c. 17).

<sup>28</sup> 4 Henry VII, cc. 16, 19; 6 Henry VIII, c. 5; 7 Henry VIII, c. 1. J. J. Scarisbrick, 'Cardinal Wolsey and the common weal' in E. W. Ives, R. J. Knecht, and Scarisbrick, eds., *Wealth and Power in Tudor England* (London, 1978), pp. 45-67; R. W. Heinze, *The Proclamations of the Tudor Kings* (Cambridge, 1976), pp. 94-8.

<sup>29</sup> E. Kerridge, *Agrarian Problems in the Sixteenth Century and After* (London, 1969), pp. 94-5; A. W. B. Simpson, *An Introduction to the History of the Land Law* (Oxford, 1961), p. 107.

<sup>30</sup> For example: STAC 2/13/83-4; 13/144, 15/11-13; 17/396; 30/46; 30/138; 32/70.

<sup>31</sup> *LP ii* (2) App. 53; Heinze, p. 96.

<sup>32</sup> Scarisbrick, 'Cardinal Wolsey and the common weal', p. 62 n. 40.

be in the common law, as recoveries, forain vouchers and corrupt trials. And for makynge and orderynge of new estatutes which may be to the high avauncement of the common wealth.<sup>33</sup> He makes Tunstall say so in his opening speech, which does not tally with other versions. But Hall was a common lawyer of Gray's Inn; his statement that one of the government's intentions in 1523 was to reform the law of recoveries must be taken seriously. Indeed there is corroboration. For when John Palsgrave, tutor to Princess Mary and the duke of Richmond, stigmatised Wolsey he wrote, 'We have begun to reform the abusions of the temporal law, especially concerning calumnniation and recoveries.' Another version explained, 'We have begun to redress the abusions of the temporal law, especially that learned men should sign such books as they presented to the court, and that recoveries should no more be used.'<sup>34</sup> It became Wolsey's policy in both chancery and star chamber to urge counsel to sign the documents of litigation (bills, answers, etc. were sometimes called 'books' by pleaders).<sup>35</sup> And by 1523 the law of recoveries had reached a crucial stage of its development.

Recoveries were real actions designed to convey land but they were usually collusive, in which case their purpose could be disreputable. From the middle of the fifteenth century conveyancers used them to alienate entailed lands for a fee simple, to transmit the fee simple of lands held in use to the *cestui que use* who had come of age, or to buy and sell land safely. The method was not watertight until 1532, when it was perfected, but it was good enough. For the law was that if a tenant in tail left substitute lands of equal value to his heirs, they could not challenge his alienation of his own land: the heirs were barred from their family estates if a judgment had been obtained entitling them to recover lands of equal value. Exactly this judgment was obtained collusively in a recovery. It directed that the alienee, who was the demandant in the action, should recover the land from the tenant, who in his turn should recover different lands of equal value from a third party whom he had vouched to warranty. Here was the trick. The alienor conceded the demandant's case even though it was feigned, because he wished to sell him the land. But to bar the entail he pleaded that since he had originally bought the lands from X, that person was bound to warrant, or guarantee, his title – that is, the third party was legally obliged to compensate him out of his own estates. The plea was untrue, but it brought X into court. When X, who worked for money, appeared, the parties craved leave to imparl – that is, they sought an adjournment. In fact, X deliberately absconded, hence judgment was given that

<sup>33</sup> Hall, I, p. 278.

<sup>34</sup> *LP* iv (3) 5750 (pp. 2555, 2557, 2562).

<sup>35</sup> Signatures in chancery are tabulated by F. Metzger, 'Das Englische Kanzleigericht unter Kardinal Wolsey, 1515–1529', unpublished Erlangen Ph.D dissertation (1976), pp. 355–7. Examples of signatures in star chamber are STAC 2/1/130; 2/148; 3/1–2, 59, 314; 4/2, 19, 206, 214–16; 17/332; 19/90; 20/181, 196; 23/242; 27/31; 33/15, 68; 35/74. Documents were rarely, if ever, signed by counsel before Wolsey's incumbency.

the alienee should have the land and that X should provide compensation. And since compensation was awarded the alienor's heirs were protected in law. But they were defrauded in fact. For X was always a man of straw who had no assets; the role was sometimes taken by a minor official of the common pleas. The latter half of the judgment was wholly imaginary: its purpose was to extinguish any claim that the alienor's heirs might conceivably produce against the alienee, who acquired a safe fee simple.<sup>36</sup>

Hall referred to recoveries, foreign vouchers and corrupt trials. 'Foreign' meant only that a tenant litigating in one jurisdiction vouched to warranty someone from another county and asked that he be summoned; the phrase 'corrupt trials' in the context of recoveries implied collusive actions to fraudulent ends. And that they caused considerable anxiety is confirmed by Christopher St German, who discussed them at length in *Doctor and Student*. The question was whether they were unconscionable owing to the collusion involved.

For that that they that be named demaundauntis shuld haue ryght to the lande where in trouth they neuer had ryght therto: wherupon folowth a false supposel in the wryt: & a false supposell in the declaracyon & a voucher to warraunte by couyn of such a persone as hath no thynge to yelde in value & therupon by couyn and collucyon of the parties foloweth the default of the vouchee: by the whiche defaulte the Iugement shall be gyuen / And so all that Iugement is deryuyed & groundyd of the vntrue supposel & couyn of the parties / wherby the lawe of the realme that hath ordayned suche a wryt of entre to helpe them that haue ryght to landes or tenementis is defraudyd: the courte is desceyuyd the heyr is disherited.

The doctor spoke these words, but the student had no convincing answer: 'And so I am in maner perplexed and wot not what to say in this case.'<sup>37</sup>

Yet the most damaging fraud of all was that the estate of the leaseholder did not easily survive a recovery suffered by the lessor. A lessee could try to intervene pending the action and in a case of 1522 the recovery was stayed until the determination of the lease. But the lessee would rarely know of the recovery; even the alienee might remain in ignorance until it was too late.<sup>38</sup> Whether or not the lessee could 'falsify' the recovery was doubtful. Lessees with written agreements fared better at common law than those with verbal ones, but the best hope for redress was to petition the lord chancellor. Wolsey entertained over 450 leasehold cases in chancery during his incumbency and a smaller number in star chamber.<sup>39</sup> He had every reason to plug this loophole

<sup>36</sup> Simpson, *Land Law*, pp. 117-29; J. H. Baker, ed., *The Reports of Sir John Spelman* (2 vols., Selden Society, London, 1977-8), II, pp. 204-6.

<sup>37</sup> T. F. T. Plucknett and J. L. Barton, eds., *St German's Doctor and Student* (Selden Society, London, 1975), pp. 160, 162.

<sup>38</sup> Baker, ed., II, pp. 182-3.

<sup>39</sup> F. Metzger, 'Litigation in the equitable court of chancery, 1515-1529' (unpublished analysis of PRO, *List of Early Chancery Proceedings*, v [Lists and Indexes, xxxviii, London, 1912]), p. 6. I am grateful to Dr Metzger for permission to cite his paper. Examples of cases in star chamber

by promoting new legislation. Indeed the matter was more urgent than the breaking of entails, which many landowners no longer regarded as sacrosanct but as a device to prevent heirs disposing of assets before they came of age. In fact, nothing reached the statute book until after Wolsey's fall. The requisite legislation was enacted in the first session of the Reformation Parliament. The act (21 Henry VIII, c. 15) described how leaseholders had been cheated and awarded them the same rights as freeholders to 'falsify' recoveries to which they were not parties. It was even retrospective in scope. The leaseholder was given full security of tenure during the term of his lease provided he continued to pay his existing rent to any new landowner. In his *Commentaries on the Laws of England* Blackstone praised the far-reaching nature of this reform, which guaranteed enjoyment of the long lease and enabled mortgages and family settlements to be built upon leases.<sup>40</sup>

Was the leasehold act some unfinished business of 1523? Since the original acts and Lords' Journals for 1523 and 1529 are lost, Wolsey's 'commonwealth' intentions must be conjectured. The chroniclers' statements are circumstantial but they cannot be ignored. Something lies behind them. And the obvious explanation is that Wolsey had plans in 1523 that went beyond taxation. If so, he failed: it is probable that his mishandling of the subsidy cost him the business that Gruffudd and Hall described.

And other 'commonwealth' business may have been lost in 1523. The editors of the *Calendar of Letters and Papers* listed five bills as belonging to that year.<sup>41</sup> One empowered owners of coal mines to drain off the water from them. The preamble argued that the commonwealth should be preferred to any private wealth, and that, among the commodities of the realm, 'ther is a certayne fuell of colles comonly called secolles wyche is gotten under the grounde and in many parties of this Realme the sayd colles liethes so depe undre ye gro[u]nd thatt they can nott be gottyn witheout grett soughes and trenches made under the erthe wherby the watter may voyd'. The document is incomplete but its intention was doubtless to allow drainage across the ground of other landowners.<sup>42</sup> Since Wolsey had just obtained the bishopric of Durham, the bill may be connected to his discovery that coal royalties numbered among his episcopal privileges. Mines at Whickham, for instance,

are STAC 2/2/108-12; 4/206; 4/214-16; 6/170-5; 20/249. A case brought to Wolsey in star chamber that was referred to the dean of the chapel is *Coffe v. Long* (REQ 3/5 [bundle]). It illustrates the loophole in unusual detail, every document of litigation being extant from bill of complaint to final decree. The lessee petitioned Wolsey following a recovery suffered in Hilary term 1509 by Lewis Pollard and others, feoffees to the use of Margaret Beaufort. The decree (30 April 1521) was a compromise whereby the plaintiff released his interest to the alienee in exchange for compensation.

<sup>40</sup> *Commentaries on the Laws of England*, ed. J. Stewart (4 vols., London, 1844), II, p. 164.

<sup>41</sup> SP 1/233, fos. 245-7; SP 1/234, fos. 43-8, 53-4, 60. Since the editors of *LP* kept no key, it is impossible to tell where these documents were found or upon what basis they were dated.

<sup>42</sup> SP 1/234, fo. 60 (*LP Add.* 419).

were worth 500 marks a year, and Wolsey was advised to rebuild Hartlepool harbour to stimulate the trade.<sup>43</sup>

Two bills, which are preserved with two copies of a working paper, restrained waste of timber. One restricted taking of the king's timber by forest officials and required those responsible for wood sales to fence off areas where trees had been felled in order that new growth might proceed without interference from grazing animals. Another bill ordered private landlords to protect 'the springs of the woods' for six years after felling. Cattle were to be kept away from the young trees and, if necessary, woodlands might be enclosed.<sup>44</sup>

The other two bills concerned glaziers and skimmers. The London glaziers' company wanted foreign craftsmen dwelling in the suburbs of the city to be subject to civic ordinances and to employ English apprentices and servants.<sup>45</sup> The skimmers sought free trade.<sup>46</sup> Those of Coventry and Bristol, in particular, wished to trade with the London skimmers who had been forbidden by their company to buy lambskins tawed in the provinces. Bills of this type would have been drafted on private initiative: the process is documented for London. For on 12 March 1523 the court of aldermen named a committee of fourteen 'to devyse what thinges be most necessary & behovfull for the Co[mm]en weale of this Cite to be moved at this next parliament to be holden the xv day of Aprille'.<sup>47</sup> The committee may have sat through virtually the whole of parliament's first session, since it was not until 16 May that 'a bill of petic[i]on' was ready 'concernyng certeyn Offices withyn this Cite with a provyso concernyng thoffice of Co[mm]en Weyer'. Drafted by Richard Broke, a justice of common pleas, and William Shelley, serjeant-at-law and recorder of the city, the bill 'shall be exhibite & put up as it is'.<sup>48</sup> None of these bills succeeded in parliament but the glaziers' demands were subsumed within a general statute regulating handicrafts. The act (14 & 15 Henry VIII, c. 2) required aliens trading in the realm to employ only English apprentices and no more than two alien journeymen. Craftsmen dwelling in the London suburbs were to be subject to the jurisdiction of the city companies and their wares were to be marked for identification purposes – those of blacksmiths, joiners and coopers in every instance, and those of other trades at the discretion of the companies. The authorities of provincial towns were given similar powers but remedy was provided for craftsmen wrongfully vexed by the new regulations. The terms of the act were not retrospective: existing foreign workers could remain until the time of the next parliament. In fact, new

<sup>43</sup> BL, Cotton MS Titus B 1, fos. 295–7 (*LP* iii (2) 2946).

<sup>44</sup> SP 1/234, fos. 43–54 (*LP Add.* 415).

<sup>45</sup> SP 1/233, fo. 245 (*LP Add.* 384).

<sup>46</sup> SP 1/233, fos. 246–7 (*LP Add.* 385).

<sup>47</sup> Corporation of London RO, Repertories of the Court of Aldermen 6, fo. 23.

<sup>48</sup> *Ibid.* fo. 38<sup>v</sup>. For the background to this episode, see STAC 2/24/50; HHL, Ellesmere MS 2655, fo. 17.